



## DEPARTMENT OF VETERANS AFFAIRS

### Notice of Request for Information on the Department of Veterans Affairs Orthotist, Prosthetist, and Prosthetist-Orthotist Standard of Practice

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Request for Information.

**SUMMARY:** The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Orthotists, Prosthetists, and Prosthetist-Orthotists. VA seeks comments on various topics to help inform VA's development of this national standard of practice.

**DATES:** Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](https://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](https://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in a potential rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, 202-461-0500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

*Authority*

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate the professional activities of VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State license, registration, certification, or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of allowing VA health care professionals to deliver health care services in a State other than the health care professional's State of licensure, registration, certification, or other State requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals which would standardize a health care professional's practice in all VA medical facilities.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may provide the same type of tasks and duties regardless of the VA medical facility where they are located or

the State license, registration, certification, or other State requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the necessary education, training and skills to perform the tasks and duties detailed in the national standard of practice and will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

### *Need for National Standards of Practice*

As the Nation's largest integrated health care system, it is critical that VA develops national standards of practice to ensure beneficiaries receive the same high-quality care regardless of where they enter the system and to ensure that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the COVID-19 pandemic. With an increased need for mobility in our workforce, including through VA's Disaster Emergency Medical Personnel System, creating a uniform standard of practice better supports VA health care professionals who already frequently practice across State lines. In addition, the development of national standards of practice aligns with VA's long-term deployment of a new electronic health record (EHR). National standards of practice are critical for optimal EHR implementation to enable the specific roles for each health care profession in EHR to be consistent across the Veterans Health Administration (VHA) and to support increased interoperability between VA and the Department of Defense (DoD). DoD has historically standardized practice for certain

health care professionals, and VHA closely partnered with DoD to learn from their experience.

### *Process to Develop National Standards of Practice*

Consistent with 38 CFR 17.419, VA is developing national standards of practice via policy. There will be one overarching national standard of practice directive that will generally describe VHA's policy and have each individual national standard of practice as an appendix to the directive. The directive and all appendices will be accessible on VHA Publications website at: <https://vaww.va.gov/vhapublications/> (internal) and <https://www.va.gov/vhapublications/> (external) once published.

To develop these national standards, VA is using a robust, interactive process that is consistent with the guidance outlined in Executive Order (EO) 13132 to preempt State law. The process includes consultation with internal and external stakeholders, including State licensing boards, VA employees, professional associations, Veterans Service Organizations, labor partners, and others. For each identified VA occupation, a workgroup comprised of health care professionals conducts State variance research to identify internal best practices that may not be authorized under every State license, certification, or registration, but would enhance the practice and efficiency of the profession throughout the agency. The workgroup is comprised of VA employees who are health care professionals in the identified occupation; they may consult with internal stakeholders at any point throughout the process. If a best practice is identified that is not currently authorized by every State, the workgroup determines what education, training, and skills are required to perform such task or duty. The workgroup then drafts a proposed VA national standard of practice using the data gathered during the State variance research and incorporates internal stakeholder feedback to date.

The proposed national standard of practice is internally reviewed, to include by an interdisciplinary workgroup consisting of representatives from Quality Management; Field Chief of Staff; Academic Affiliates; Field Chief Nursing Officer; Ethics; Workforce Management and Consulting; Surgery; Credentialing and Privileging; Field Chief Medical Officer; and EHR Modernization.

Externally, the proposed national standard of practice is provided to our partners in DoD. In addition, VA labor partners are engaged informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, a letter is sent to each State board and certifying organization that includes the proposed national standard and an opportunity to further discuss the national standard with VA. After the States and certifying organizations have received notification, the proposed national standard of practice is published to the Federal Register for 60 days to obtain feedback from the public, including professional associations and unions. At the same time, the proposed national standard is published on an internal VA site to obtain feedback from VA employees. Feedback from State boards, professional associations, unions, VA employees, and any other person or organization who informally provides comments via the Federal Register will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals, and that are better for Veterans or VA health care professionals. We will publish a collective response to all comments at <https://www.va.gov/standardspractice>.

After the national standard of practice is finalized, approved and published in VHA policy, VA will implement the tasks and duties authorized by that national standard of practice. Any tasks or duties included in the national standard will be incorporated into an individual health care professional's privileges, scope of practice, or functional statement following any training and education necessary for the health care

professional to perform those functions. Implementation of the national standard of practice may be phased in across all medical facilities, with limited exemptions for health care professionals as needed.

### *National Standard for Orthotist, Prosthetist, and Prosthetist-Orthotist*

The proposed format for national standards of practice when there are State licenses and a national certifying organization is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. The second paragraph references the education and certification needed to practice this profession at VA. The third paragraph confirms that this profession follows the standard of practice set by the national certifying body. A final statement explains that while VA only requires a national certification, some States also require licensure for this profession. The standard includes information on which States offer an exemption for Federal employees and where VA will preempt State laws, if applicable.

We note that the proposed standards of practice do not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight whether there are any areas of variance in how this profession can practice across States and how this profession will be able to practice within VA notwithstanding their State license, certification, registration, and other requirements.

VA Orthotists, Prosthetists, and Prosthetist-Orthotists are health care professionals who are specifically educated and trained to manage comprehensive orthotic and/or prosthetic patient care. VA qualification standards require Orthotists, Prosthetists, and Prosthetist-Orthotists to have an active, current, full, and unrestricted certification from either the American Board of Certification (ABC) in Orthotics, Prosthetics & Pedorthics or from the Board of Certification (BOC). VA reviewed whether there are any alternative certifications or State requirements that could be required for

Orthotists, Prosthetists, and Prosthetist-Orthotists and found that 15 States require a license to practice as an Orthotist, Prosthetist, and Prosthetist-Orthotist. Of those, VA found that all 15 States exempt Federal employees from their State license requirements.

While VA qualification standards for Orthotists, Prosthetists, and Prosthetist-Orthotists require one certification from either ABC or BOC, VA proposes to adopt a standard of practice consistent with the ABC certification. There is no variance between these two national certifications; however, ABC standards set more specific expectations for education, training, and practice areas. Therefore, VA Orthotists, Prosthetists, and Prosthetist-Orthotists will follow the standard as set by this national certification. The standard for the ABC certification can be found here: <https://www.abcop.org/publication/scope-of-practice>.

*Proposed National Standard of Practice for Orthotist, Prosthetist and Prosthetist-Orthotist*

Orthotists, Prosthetists and Prosthetist-Orthotists are health care professionals who are specifically educated and trained to manage comprehensive orthotic and/or prosthetic patient care. This includes patient assessment, formulation of a treatment plan, implementation of the treatment plan, follow-up, and practice management. Documentation by the Orthotists, Prosthetists and Prosthetist-Orthotists is part of the patient's medical record and assists with establishing medical necessity for orthotic and/or prosthetic care.

Orthotists, Prosthetists and Prosthetist-Orthotists in the Department of Veterans Affairs (VA) possess the education and certification from either the American Board of Certification (ABC) or Board of Certification (BOC) required by VA qualification

standards, as more specifically described in VA Handbook 5005, Staffing, Part II, Appendix G32.

This national standard of practice confirms that Orthotists, Prosthetists and Prosthetist-Orthotists practice according to the Orthotist and Prosthetist standards from the American Board of Certification, available at: <https://www.abcop.org>. As of March 2022, all Orthotists, Prosthetists and Prosthetist-Orthotists in VA follow the standards associated with this national certification.

Although VA only requires a certification, 15 States require a State license in order to practice as an Orthotist, Prosthetist and Prosthetist-Orthotist in that State: Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Kentucky, Minnesota, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, and Washington. However, all 15 States exempt Federal employees from their State license requirements.

As of March 2022, there is no variance in how VA Orthotists, Prosthetists and Prosthetist-Orthotists practice in any State.

*Request for Information:*

1. Are there any required trainings for the aforementioned practices that we should consider?
2. Are there any factors that would inhibit or delay the implementation of the aforementioned practices for VA health care professionals in any States?
3. Is there any variance in practice that we have not listed?
4. What should we consider when preempting conflicting State laws, regulations, or requirements regarding supervision of individuals working toward obtaining their license or unlicensed personnel?
5. Is there anything else you would like to share with us about this national standard of practice?



Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 21, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

Regulation Development Coordinator,

*Office of Regulation Policy & Management,*

*Office of General Counsel,*

*Department of Veterans Affairs.*

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